

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 392 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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STATE OF GUJARAT

Versus

BABUBHAI HIMATLAL SHAH

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Appearance:

MR KC SHAH, ADDL.PUBLIC PROSECUTOR for petitioner-State

MR AD SHAH for Respondent No. 1, 3

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 02/04/96

ORAL JUDGEMENT

The petitioner happens to be the State of Gujarat, while the respondents are the original accused persons.

A private complaint came to be registered as

Atrocity Case No. 8 of 1993 before the City Sessions Court, at Ahmedabad, by the complainant Shivabhai Trikambhai Chmar. The say of the complainant in the complaint in brief is that, he used to work as a worker or a labourer of a Contractor of a Public Limited Company. According to him, his work as a worker, was found to be satisfactory and later on, he was being considered for the appointment to work as a Mixer Machine Operator. He, therefore, was called at the office of the Company, where, according to him, the respondents-accused were present. He had reached the office of the Company situated at Khanpur, Ahmedabad, on July 8, 1993, at about 6.30 p.m. He was, according to him, being accompanied by witness, Bhanubhai Parghi. According to the complainant, later on, he was called in the cabin or office of the respondent-accused no.1, but, meanwhile, the respondent no.1 had started to feel uneasy and he had vomited out. The respondent-accused no.1 had asked the complainant to go out and to bring lemon. Accordingly, he had gone out and had brought in two lemon fruits. But according to him, after taking the lemon water, the respondent-accused no.1 had asked the complainant to clean the office premises, including the walls, and on his refusal, he was abused and humiliated. According to the complainant, later on, the respondent-accused no.1 had assaulted upon him by a shoe and two three blows were given. The accused no.3, meanwhile, had come in and he had also assaulted upon him with the shoe. He had received the injuries by the above said foot and shoe blows. It is also the say of the complainant that, later on, the accused no.1 had threatened him not to move near his office or even in the city of Ahmedabad or else, he would have to face dire consequences. According to the complainant, he had gone to the police station, immediately, but his FIR was not registered and, therefore, he was required to move the Court, by filing the private complaint.

Later on, before the charges came to be framed, the application was submitted on behalf of the respondents-accused persons for their discharge under Section 227 of the Code of Criminal Procedure, 1973, on the basis that, there is no sufficient ground for proceeding against the accused. The Court below has sifted the evidence as it was before it and has, ultimately, come to the conclusion that, the respondents-accused required to be discharged. These orders came to be passed by the City Sessions Court, Ahmedabad, on December 1, 1993. These orders are in challenge in the present petition before me.

Learned Government Counsel Mr.K.C.Shah, who appears on behalf of the petitioner-State urges that, the Court below has committed a serious error in granting the application for discharge and that, the Court below has acted as if the Court was marshalling or examining the evidence which was, according to the learned Counsel for the State, not open to the Court below. It is also said by the learned Government Counsel that, at any rate, the charge for the alleged commission of the offences punishable under Section 3(1)(x) and (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should have been framed. Mr. Ashok D. Shah, learned Counsel for the respondents-accused, on the other hand, urges that, it is true that the Court, while deciding the application under Section 227 for discharge, is not entitled or authorised to marshal the evidence, the sifting of the evidence is permissible and that, when this has been done by the Court below, it has appeared very clearly that, there was no sufficient ground for proceeding against the accused and, therefore, the learned Trial Judge was, perfectly justified in ordering the discharge of the accused persons.

When a reference is made to the orders passed by the Court below, it is apparent that, the learned Special Public Prosecutor, attached to the Court, had made a concession in unequivocal manner that, probably, the charges under Section 3(1)(i), (ii) and (iii) were not available and, therefore, the prosecution would request to drop the charges, in this respect. Despite this concession, the learned Judge has proceeded ahead to examine the case falling within the above said provisions also. Anyhow, when the learned Public Prosecutor had made a concession and, ultimately, the Court comes to the conclusion that, there was no sufficient ground for proceeding against the accused in respect of those charges, in my opinion, further scrutiny in that respect is uncalled for.

Learned Government Counsel Mr. K.C.Shah, firstly, places reliance upon the provisions contained in Section 3(1)(x) of the Act of 1989 and urges that, even if the alleged incident had taken place in the private chamber, office or cabin of the respondent no.1, then also, as at least, one witness was present there, it would be "a place within public view". The learned Government Counsel urges that, this question also, in his opinion, could not be decided, at this juncture, and that the concerned Court can come to a definite conclusion after only the examination of the evidence which could be led before the

Court. The next emphasis by the learned Government Counsel is upon the provisions contained in Section 3(1)(ii) of the Act of 1989, while urging that, some threats were administered to the complainant, saying that, he should not venture to go near the office of the respondents-accused persons or even within the city of Ahmedabad or else, he shall have to face dire consequences. The complainant has said these things in his complaint before the Court.

Two important aspects which should not go unnoticed are the facts that, though the complainant has said in his complaint before the Court that, he had approached the police in the right earnest, the investigation by the police, in pursuance to the orders passed by the Court had revealed that, the complainant had never approached the police with any such grievance. The second aspect which requires a consideration is the fact that, though the complainant says that, he had received multiple foot and shoe blows, admittedly, he has not taken any medical treatment, in this respect.

The learned Government Counsel has urged with great vehemence that, this was not the stage for the marshalling of the evidence and that, the Court below was not justified in considering the say of the complainant in the complaint and the statement of the solitary witness and the panchnama. In answer to this contention, Mr. Ashok D. Shah, learned Counsel for the respondents-accused urges that, no doubt, marshalling of evidence is not permissible, but sifting of the evidence with a view to come to the conclusion as to whether sufficient grounds exist or not, is permissible to the Court. Learned Counsel Mr. Ashok D. Shah, in support of his contention, places reliance upon the Supreme Court pronouncement in NIRANJAN SINGH KARAM SINGH PUNJABI, ADVOCATE, APPELLANT v. JITENDRA BHIMRAJ BIJJA AND ORS., RESPONDENTS, AIR 1990 S.C. 1962. The Supreme Court, while examining the question regarding the discharge under the TADA 1987, has made it clear that, the Judge, while considering the question of framing the charges under Section 227 of the Code of Criminal Procedure, 1973, has the undoubted powers to sift and weigh the evidence for the limited purpose of finding out whether or not, a prima facie case against the accused has been made out. The Supreme Court pronouncement makes it clear that, though the Judge should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial, but, he can sift and weigh the evidence for the limited purpose.

Accepting this test laid down by the Supreme Court in the case of NIRANJAN SINGH (Supra), when the material which was made available to the Court below is examined, it appears that, there was no sufficient ground for proceeding against the accused, even for the offence punishable under Section 3(1)(x) and (xv) of the Act of 1989. Undisputedly, the incident had taken place in the private office, cabin or the chamber of the accused no.1, situated in a private building, situated at Khanpur. Nobody else was present at the time of the alleged incident. Therefore, it cannot be said that, there was an intentional insult or intimidation with the intention to humiliate the complainant, who claims to be a member of the Scheduled Caste community in any place within the public view. It was sought to be canvassed by learned Government Counsel Mr. Shah that, at least one witness was present and that, his presence would make the office or the cabin of the accused no.1 a place within the public view. But, when the say of the solitary witness in his statement before the police is sifted, it becomes clear that, he was out of the cabin. Therefore, it appears that, Section 3(1)(x) is prima facie not attracted. The same is the position regarding the offence punishable under Section 3(1)(xv). At the most, it could have been said that, the complainant was threatened, but it cannot be said that, he was forced or was caused to leave his house, village or other place of residence. At the most, it can be said that, he was threatened to be out of the office in the harshest possible words.

Therefore, when the material is examined within the limits granted to the Court by the Supreme Court in case of NIRANJAN SINGH (Supra), it becomes clear that, there was no sufficient ground for proceeding against the accused for the above said two offences, for which, heavy emphasis was placed by the learned Government Counsel. The present petition, therefore, fails and the same is hereby accordingly dismissed. Rule shall stand discharged.

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